**HON'BLE SRI JUSTICE GODA RAGHURAM**

**W.P.NO. 3456 OF 2006**

**DATED: 23.2.2006**

Between:

M/s Dasha Bhuja Wines

… Petitioner

and

The Prohibition and Excise Inspector,

SHO, Excise Station, Rayadurg,

Anantapur District and others

… Respondents

**HON'BLE SRI JUSTICE GODA RAGHURAM**

**W.P.NO.3456 OF 2006**

**ORDER:**

By an order of the 2nd respondent dated 2.2.2006, the A-4 licence of the petitioner to sell liquor in retail from the licensed premises in Ratibhavi Vanka village, Rayadurg Mandal, has been suspended. The 2nd respondent also issued a show cause notice of even date calling upon the petitioner to show cause why the licence be not cancelled for violation of the Rules and Conditions of licence.

On 30.1.2006, the licenced premises of the petitioner was inspected by the Enforcement Wing of the Excise Department. The person who was in the licensed shop is alleged to have absconded on seeing the visiting party. On inspection of the shop, allegedly 48 Nips (180 ML) of the specified brand of Whisky were found without Excise adhesive labels and some other quantity of liquor as well without the adhesive labels or with unauthorized labels in relation to the licensed premises. These and other circumstances recorded in the order of suspension led to the impugned order dated 2.2.2006 and to the show cause notice of even date.

Aggrieved by the order of suspension, the petitioner preferred an appeal to the 3rd respondent. The 3rd respondent by the order dated 20.2.2006 rejected the appeal.

The petitioner's grievance is that the impugned order does not specify that the suspension is pending enquiry. Therefore, the order should be considered as a substantive suspension of the licence as a measure of penalty, is the contention.

On this assumptive platform, the petitioner contends that a substantive suspension order cannot be issued without notice and opportunity to the petitioner as, such an order would adversely impact him with civil consequences. It is additionally contended that having substantively suspended the licence, the 2nd respondent could not proceed to inquire into the events alleged for the purpose of cancellation of licence, as cancellation of licence and suspension are substantive sanctions which cannot simultaneously be imposed for the same events of alleged

misconduct or illegality. The third dimension of the petitioner's grievance is that the 3rd respondent has not adequately applied his mind and has failed to pass a reasoned order on the petitioner's appeal.

None of the contentions urged by the counsel for the petitioner commend acceptance by this court. Though the order of the 2nd respondent dated 2.2.2006 suspending the petitioner's licence does not state in so many words that it is a suspension pending enquiry, the inadequacy of the phraseology used in the 2nd respondent's order dated 2.2.2006 must be considered in the context of the show cause notice of the same date where the petitioner has been called upon to explain why his licence be not cancelled. It is a contemporaneous administrative document proceeding from the 2nd respondent which throws colour on the true nature and import of the order of suspension. The two orders being contemporaneous documents must be construed harmoniously to arrive at the true intent of the impugned proceedings without trying to pillory the 2nd respondent's order on the platform of linguistic imperfection. So considered, the 2nd respondent's proceedings in Rc.No.60/2006/B1 dated 2.2.2006 is clearly an order of suspension pending enquiry and shall be so understood.

The suspension pending enquiry is on the basis of a prima facie record of unauthorized liquor having been found in the licensed premises of the petitioner. In the circumstances, no case is made out for interference with an order of suspension pending enquiry, of the licence of the petitioner.

In the light of the above analysis, the show cause notice issued by the 2nd respondent dated 2.2.2006 does not suffer from any infirmity on the assumption that there is a proposal for cancellation of the petitioner's licence simultaneously with a substantive order of suspension. As the suspension is one pending enquiry as analyzed above, the proceedings for cancellation of licence could be pursued, but in

accordance with law.

This court also discerns no infirmity in the order of the 3rd respondent dated 20.2.2006 rejecting the appeal of the petitioner. The 3rd respondent recorded the following reasons for rejecting the order.

> *"The records were examined. Heard the arguments of the counsel of the licensee of M/s Dasabhuja Wines, Ratibavi Vanka (V) of Rayadurg (M) on 17.2.2006 and I found them not convincing and not supported by any facts and acts and rules. Since, the licensee of M/s Dasabhuja Wines, Rathibhavi Vanka of Rayadurg was directly involved in (3) cases of Non duty paid liquor, for which the Proh. and Excise Superintendent, Anantapur has suspended his licensee vide Rc.No.60/2006/B dated 2.2.2006 and his father was the main accused in Police case, where large quantity of Non duty paid liquor was seized, I find the decision of Proh. and Excise Superintendent, Anantapur in suspending the licence of Petitioner's shop is correct, regular and legal which is as per rules. Hence, the appeal filed by the licensee to grant interim stay on the Orders of Proh. and Excise Superintendent, Anantapur in Rc No:60/06/B dated 2.2.2006 and permit him to run the shop till the disposal of the case through the Advocate is rejected."*

It requires to be noticed that the appeal preferred by the petitioner was against an order of suspension of the licence and while the substantive proceedings for cancellation were under process. The alleged circumstances on the date of inspection of the petitioner's premises i.e. 30.1.2006 warrant no other conclusion but as to the appropriateness of the order of suspension pending enquiry of the petitioner's licence. The 3rd respondent is a quasi judicial authority of the Excise Department and within the limits of such jurisdiction and level of comprehension, has recorded adequate reasons though not of a high degree of forensic discipline expected of a trained judicial officer. In the totality of the circumstances, no perversity in the exercise of appellate jurisdiction is discernible in the 3rd respondent's order dated 20.2.2006.

For the aforesaid reasons, the writ petition is without merits and is accordingly

dismissed. The 2nd respondent is directed to expedite the hearing into the cancellation proceedings initiated against the petitioner by the show cause notice dated 2.2.2006. The 1st respondent shall consider and conclude the proceedings and passing a speaking final order in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs.

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**GODA RAGHURAM, J**

**Date: 23.2.2006**

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